84-1797

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No. _____

IN THE

Supreme Court of the United States

October Term, 1984

MORGAN L. JONES, FRANCIS ANDERSON, FRANK BANASKY, ORRIE ANDERSON, JESSE H. PETRICH, GEORGE FIELD, RICHARD ELVERS, JAMES MENDES, AL BRUCE, HANS PEDERSEN, LEO ZINGMEISTER, Individually and as Representatives of a Class,

Petitioners,

v.

RONALD REAGAN, President of the United States; MARGARET M. HECKLER, Secretary of the Department of Health and Human Services; C. EVERETT KOOP, Surgeon General of the United States; and RICHARD ASHBAUGH, Acting Director of the Bureau of Medical Services,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petition for Writ of Certiorari

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92 pp

Petitioners MORGAN L. JONES, FRANCIS ANDERSON, FRANK BANASKY, ORRIE ANDERSON, JESSE H. PETRICH, GEORGE FIELD, RICHARD ELVERS, JAMES MENDES, AL BRUCE, HANS PEDERSEN, LEO ZINGMEISTER, Individually and as Representatives of a Class, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on December 4, 1984; and the order denying rehearing filed February 13, 1985.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in allowing retrospective application to § 986 of the Omnibus Budget Reconciliation Act of August 13, 1981, cutting off medical benefits to merchant seamen already rendered Permanently Not Fit For Duty in the service of the ship?

2. Did the Court of Appeals err in holding that medical care to seamen injured in the service of the ship is a "public benefit," such as to require only the lowest tier of constitutional analysis?

3. Did the Court of Appeals err in ruling that disabled seamen should pursue their remedies on an individual basis, when the District Court certified the petitioners as a class, and that certification went unchallenged on appeal?

4. Did the Court of Appeals err in relying upon facts not in the record, holding that laches was the only bar preventing disabled seamen from reviving their traditional remedy of cure against shipowners?

PARTIES TO THE PROCEEDING

A list of all parties to this proceeding are contained in the caption.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit (reproduced at App. A) will be reported in _____ F.2d _____ (1984). The opinion of the United States District Court for the Western District of Washington, Honorable Donald S. Voorhees, District Judge, Presiding (reproduced at App. C), is unreported.

JURISDICTION

The opinion of the United States District Court for the Western District of Washington was entered on September 13, 1983. The District Court's order denying reconsideration was entered on October 19, 1983. The opinion of the United States Court of Appeals for the Ninth Circuit was entered on December 4, 1984. The Court of Appeals' order denying a petition for rehearing and

suggestion for rehearing en banc was entered on February 26, 1985.

The petitioners invoke the jurisdiction of this Court under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions and the statute at issue are as follows:

U.S. Const. Art. III, § 2:

> The judicial power shall extend...to all Cases of admiralty and maritime Jurisdiction...

U.S. Const., Amend. V:

> No person shall be...deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

42 U.S.C. § 249(a):

> The following persons shall be entitled, in accordance with regulations, to medical, surgical, and dental treatment and hospitalization without charge at hospitals and other stations of the Service:

(1) Seaman employed on vessels of the United States registered, enrolled, and licensed under the maritime laws thereof...(repealed August 13, 1981)

95 Stat. 603-605, The Omnibus Budget Reconciliation Act of 1981, Title IX, Subtitle J, §§ 986 and 988, PL 97-35 (8/13/81) (repealing 42 U.S.C. § 249(a)):

reproduced at App. E.

STATEMENT OF THE CASE

Effective October 1, 1981, merchant seamen and fishermen lost their 200-year entitlement to free medical care at the United States Public Health Service (USPHS) Hospitals, formerly called the "Marine Hospitals." Omnibus Reconciliation Act of 1981, § 986 of PL 97-35 (App. E).

The petitioners are a class of merchant seamen and fishermen who experienced injury or illness prior to October 1, 1981, which led to a declaration of Permanently Not Fit For

Duty (PNFFD), and who were otherwise eligible for USPHS medical care on the cut-off date. The class of petitioners numbers approximately 5,000 seamen and fishermen, roughly half of whom are not adequately covered by other sources of medical insurance and benefits. All of the petitioners received their underlying illness/injuries in the service of vessels privately owned, or owned or contracted by the government.

Many of the petitioners failed to provide for their future health needs, in reliance upon the marine hospitals, by failing to enroll in Medicare or private health plans; failing to join or remain in unions with retirement benefits; failure by union members to collectively bargain for comprehensive health care with their employers; failing to bring suit for the cost of their cure after being injured in the service of the ship;

and discounting the consideration given for a release, in cases where claims for maintenance and cure are combined with counts for unseaworthiness and Jones Act negligence.

The petitioners brought suit in the United States District Court for the Western District of Washington, challenging the constitutionality of §§ 986 and 988 of the Budget Act as applied to their class. The latter section of the Budget Act provided for a transition period of up to one year for those seamen who were inpatient on the effective date of the Act. The challenge to the constitutionality of the transition period will not be renewed in this Petition.

The petitioners claimed that Congress had impermissibly interfered with the jurisdiction of the courts sitting in admiralty, by interfering with

past relief and reliance by the courts in fashioning relief for their wards. The petitioners further claimed that the government had assumed the obligation of shipowners to provide cure, under a variety of theories, and especially where the government itself was the shipowner; that once the government defaulted on its obligation, the petitioners were unable to reassert their rights against the shipowners due to laches in claims never brought, the collateral estoppel effect of signing a release of claim, the res judicata effect of claims adjudicated, and the practical effect of bringing claims against shipping companies, most of whom are long defunct. The petitioners also claimed that § 986 of the Budget Act should be subject to strict scrutiny, due to the special protection given seamen as wards of admiralty, and due to the fact that a

seaman's right to cure when injured in the service of the ship, under the ancient doctrine of maintenance and cure, may be deemed fundamental as arising out of Art. III, § 2 of the U.S. Const.

The petitioners did not challenge the authority of Congress to cut off health care to all other classes of beneficiaries, both prospectively and retrospectively; only to those who traced their entitlement to care at the Marine Hospitals through the doctrine of maintenance and cure, and whose rights had vested prior to October 1, 1981. Nor did the petitioners challenge the authority of Congress to close the Marine Hospitals. The petitioners' challenge is limited to the failure of the government to insure that adequate medical care was continued to those of the class of PNFFD seamen who have no recourse. In addition to contractual and other grounds for the

continued provision of cure, the petitioners invoked, in the alternative, the admiralty's equitable jurisdiction to grant relief to its wards in quasi-contract.

The District Court certified the petitioners' class, as defined supra. The District Court also granted summary judgment of dismissal to the government, holding that §§ 986 and 988 of the Budget Act were rationally to a legitimate governmental interest. App. C. Petitioners' motion for reconsideration was denied by the District Court. App. D.

On petitioners' appeal to the Ninth Circuit, the Court of Appeals affirmed the District Court. The Ninth Circuit held that PNFFD seamen were not necessarily barred from pursuing their traditional maintenance and cure remedies against shipowners; and that they were

free to attempt same, but on an individual basis. Given the finding that the petitioners are not precluded of remedy, the Ninth Circuit had no difficulty dispatching many arguments advanced by the petitioners, and finding it unnecessary to reach the rest. App. A.

There was no cross-appeal by the government to the District Court's certification of petitioners' class.

The Ninth Circuit denied a petition for a rehearing and suggestion for a rehearing en banc. App. B-3.

EXISTENCE OF JURISDICTION BELOW

Petitioners initiated this action in the United States District Court on August 18, 1982, pursuant to 95 Stat. 603 (1981), supra; 42 U.S.C. § 249(a) (prior to its 1981 repeal); U.S. Const., Art. III, § 2, and Amend. 5; 28 U.S.C. §§ 1331 and 1333. The United States Court of

Appeals for the Ninth Circuit had jurisdiction pursuant to 28 U.S.C. §§ 1291 and 1294.

ARGUMENT FOR GRANTING THE WRIT

The Marine Hospitals were established by Congress in 1798. 1 Stat. 605, c. 77. The first expositive declaration of the parameters of a seaman's right to maintenance and cure on this side of the Atlantic were not penned until 25 years later by Justice Story:

> In the adminicular researches (not inconsiderable) to which my duty has led me, I have not been able to detect a single instance, in which the maritime laws of any foreign country has thrown upon seamen disabled or taken sick in the service of the ship, without their own fault, the expenses of their cure.

Harden v. Gordon, No. 6,047, 11 Fed.Cas. 480, 482 (C.C. Maine 1823).

As recognized by Justice Story, the Marine Hospitals had become engrafted into the remedy for seamen injured in the

service of the ship. Id. The question presented by this Petition is what remedy exists for those seamen rendered Permanently Not Fit For Duty in the service of the ship prior to the shutdown of the Marine Hospitals on October 1, 1981, who are in present need of free medical care, and who lack recourse against the shipowner? This important question of the general maritime law was examined more closely by the Ninth Circuit than by the District Court below, but has not yet been answered.

Although the petitioners raised numerous constitutional issues, the majority of arguments fall under the ancient maritime doctrine of maintenance and cure. Underlying all of these arguments is the assumption that the petitioners are barred from bringing belated actions for "cure" against the shipowner. This assertion has never been

challenged by the defendants, nor in District Court. The Court of Appeals undercut almost all of the petitioners' arguments by implying, sua sponte, that laches was the only obstacle preventing petitioners from receiving relief; hinting broadly that laches would not apply given passage of § 986 of the Budget Act. App. A-5 - A-8. The Court of Appeals completely ignored other bars to relief, including applicable statutes of limitation, the collateral estoppel effect of a seaman's release of liability, and the res judicata effect of a judgment or dismissal with prejudice, as a matter of law; and, more importantly, the factual impossibility of recovering from shipowners out of business, and from vessels that have been scrapped or sunk.

There is no statute of limitation for bringing any action for maintenance

and cure. Norris, The Law of Seamen, § 580 (3rd ed. 1970). Cf., 46 U.S.C. § 763a: three-year statute of limitation for actions arising out of a "maritime tort" (eff. 10/6/80). See also, Nasser v. Hudson Waterways Corp., 563 F.Supp. 88 (W.D. Wash. 1983). Laches is (was?) the only yardstick for timeliness in the situation of a seaman bringing an action for maintenance and cure against a shipowner.

Laches consists of two elements: inexcusable delay in instituting suit, and resulting prejudice. Norris, supra. The Court of Appeals hinted broadly that any delay by the petitioners in bringing a claim is justified, due to a change in the law, and would probably result in minimal prejudice. App. A-7. The petitioners applaud this dictum. However, relief from a bar of laches would grant remedy to only a fraction of

the petitioners' class. Unresolved are questions of relief to seamen for whom the doctrine of laches as no applicability.

Seamen injured or taken ill aboard government-owned/contracted vessels are time-barred by a two-year statute of limitation under the Suits in Admiralty Act (46 U.S.C. § 741 et. seq.) and the Public Vessels Act (46 U.S.C. § 781 et. seq.). 46 U.S.C. § 745. See, Phalen v. United States, 32 F.2d 687 (2d Cir. 1929) (applying the two-year limitation period to the Public Vessels Act). Seamen who file suit, and were subsequently rendered judgment, or had their claims dismissed with prejudice pursuant to a settlement, are barred from re-litigating their medical specials by the doctrine of res judicata.

Seamen bringing claims for shipboard injury/illness, who settled those claims

with or without the institution of a lawsuit, are routinely required to execute a Release for all present and future medical specials in order to settle their claim. Absent a showing of deception, coercion, or overreaching, seamen's releases bar a subsequent lawsuit for the same injuries. Norris, supra, § 501. Inadequacy of consideration will not invalidate a Release unless the consideration is so small as to stamp the transaction as fraudulent. Id., § 515. Releases for unknown claims are upheld, "where the releasee (shipowner) is buying his peace, and where not so much the extent of the supposed injuries, as the question of liability, is the subject matter of the settlement." Am.Jur.2d, Release § 32. A mutual mistake has sometimes been raised to invalidate the binding effect of a Release. Id. An unexpected act of

Congress does not constitute the type of "mutual mistake" such as to expose the releasee to new liability. A Release represents a final agreement between the parties, and the petitioners may not use a subsequent change in the law to set aside a written Release. Wilson v. New York City Transit Authority, 454 N.Y.S.2d 962 (1982), 66 Am.Jur.2d, supra, § 33 (Supp. 1984).

Despite uncontested assertions to the contrary, the Court of Appeals assumed that none of the class of seamen at bar brought suit against any of the shipowners and hence confined the decision to the applicability of laches. That assumption is not true. Many of the class of petitioners, including some of those named in the caption, have brought claims against the shipowner. At least one such claim was documented in the Clerk's Record transmitted to the Court

of Appeals. The petitioners make an offer of proof, as was made to the Court of Appeals in the petition for rehearing, to demonstrate that many of their number made claims against the shipowner, and subsequently settled those claims with or without the institution of suit, for shipboard injuries; said claims culminating in their signing of a Release. See, App. G. Said Releases were routinely exchanged for reduced consideration based upon the assumption of continued free medical care through the USPHS.

There are arguable legal theories whereby a seaman may dodge the effect of a final judgment or an intelligently-executed Release. This brings us back to the laches argument upon which the Court of Appeals relied to defeat the petitioners' claim. Assuming individual seamen in the petitioners' class can

overcome the respective hurdles or laches, statutes of limitation, collateral estoppel, or res judicata; who will they sue? The vissitudes of the shipping industry --- controlled by the balance of trade, war/peace, foreign exchange rates, government subsidy, and the general health of the economy --- cause shipping companies, with a few notable exceptions, to be relatively short-lived. For actions in rem --- a seaman's action against the vessel itself --- saltwalter vessels are as well short-lived, being scrapped or sold due to rust and/or changes in technology, to say nothing or enemy action. The petitioners submit a second offer of proof on the number of U.S. shipping companies that have gone out of business since World War II. App. F. The record below indicates that named petitioner JESSE H. PETRICH traces some of his

disability to an injury in 1942 (when the potential- defendant vessel sank), and was rendered PNFFD 18 years ago; petitioner JOHN EISENBACH was declared PNFFD more than 10 years ago; petitioner GEORGE FIELD incurred his crippling illness 16 years ago; AL BRUCE was declared PNFFD some 20 years ago; and ORRIE ANDERSON suffers from a 1966 injury, leading to a finding of PNFFD more than 16 years ago. App. G.

The Court of Appeals held that "laches now bars actions against shipowners...(and that this assumption) underlies the entire constitutional attack on the Budget Act..." App. A-5. By phrasing the petitioners' argument thusly, the Court of Appeals never addressed the other grounds upon which a shipowner (if he still exists) may escape his obligation to provide cure; and the issue of what relief is appropriate to

seamen who have no remedy; being practically, as opposed to legally, denied remedy by the passage of time. App. A-32 - A-33. By this reasoning, the Court of Appeals felt it unnecessary to address many of the petitioners' other arguments, e.g., novation and/or equitable relief. App. A-30, A-32 - A-33.

The Court of Appeals held that the laches issue should be decided in individual suits. App. A-12. This holding undoes what was accomplished in the District Court below. The appropriateness of a class action was thoroughly briefed and argued prior to certification by the District Court. By not challenging the certification of the petitioners' class on appeal, the government perhaps realizes what was recognized by the District Court; that

the underlying issues for each member of the petitioners' class are similar, if not identical; and that a class action prevents the danger of inconsistent rulings and a multiplicity of suits in what is admittedly a close issue. Furthermore, given the fact that many, if not most, of the petitioners are unable to pay for their own medical requirements, it is unlikely that they would have the financial ability to retain counsel for the pursuit of individual actions.

The petitioners take issue with the Court of Appeals' allowance of retrospective application to § 986 of the Budget Act; and the characterization of cure, for injuries received in the service of the ship, as a "public benefit," such as to require only the lowest tier of constitutional scrutiny. App. A-24 - A-25 and A-19. For those

seamen who are found to be legally barred by laches, or who are proceeding against defunct shipping companies --- and who have the financial wherewithal to pursue these claims on an individual basis; the Court will again be squarely presented with these issues.

The laches premise utilized by the Court of Appeals applies to only a very small portion of the petitioners' class. I.e., those seamen who were injured in the service of the ship, were subsequently declared Permanently Not Fit For Duty, who never brought an action against the shipowner, and who were in the employ of a shipping company that is still extant today. Rather than filing, briefing and arguing thousands of individual cases; the sorting out of circumstances would be better handled by a special master appointed by the Court, should there indeed be a significant

distinction between bars of laches, collateral estoppel, res judicata, or factual impossibility.

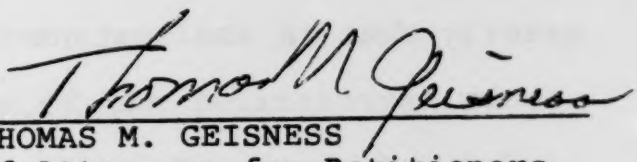
Finally, the Court of Appeals invites those petitioners injured in the service of government-operated vessels to sue the government for their cure. App. A-28 - A-29. The petitioners have done exactly that in the instant case.

The doctrine of maintenance and cure is a creature of the court sitting in admiralty. The petitioners do not challenge the authority of the legislative branch to discontinue the 200-year assumption by the government of the shipowner's obligation to provide cure, to those seamen who were not previously disabled and had not relied to their detriment on continued care at the USPHS Hospitals. However, when Congress attempts to undo past reliance and relief

granted by the judicial branch, there is presented an extremely important question of constitutional law which should be settled by this Court.

Respectfully submitted this 14th day of May, 1985.

THOMAS M. GEISNESS & ASSOCIATES

By 
THOMAS M. GEISNESS
Of Attorneys for Petitioners

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MORGAN L. JONES, FRANCIS ANDERSON, FRANK BANASKY, ORRIE ANDERSON, JESSE H. PETRICH, GEORGE FIELD, RICHARD ELVERS, JAMES MENDES, AL BRUCE, HANS PEDERSEN, LEO ZINGMEISTER, Individually and as Representatives of a Class,	No. 83-4309 D.C. #CV 82-958V O P I N I O N
Plaintiffs-Appellants,	
v.	
RONALD REAGAN, President of the United States; MARGARET M. HECKLER, Secretary of the Department of Health and Human Services; C. EVERETT KOOP, Surgeon General of the United States; and RICHARD ASHBAUGH, Acting Director of the Bureau of Medical Services,	
Defendants-Appellees.	

Appeal from the United States
District Court for the
Western District of Washington
Honorable Donald S. Voorhees,
District Judge, Presiding

Argued and Submitted
August 6, 1984

Before: ANDERSON, SKOPIL and BOOCHEVER, Circuit Judges.

BOOCHEVER, Circuit Judge:

The plaintiffs, a class of merchant seamen who have been declared permanently not fit for duty because of physical ailments or injuries, challenge sections 986 and 988 of the Omnibus Budget Reconciliation Act of 1981, which terminated the seamen's right to free medical care in government facilities. The seamen contend that the termination of care violates equal protection, due process, the separation of powers, contract law and equity. In addition, the seamen argue that the Act's one-year extension of medical care to certain hospitalized seamen establishes an irrational classification in violation of equal protection. The district court granted summary judgment for the government. We affirm.

FACTS

The facts are uncontested. The plaintiffs are a class of merchant seamen, numbering approximately 5,000, who experienced illness or injury in the course of their duties prior to October 1, 1981, and as a result were declared permanently not fit for duty. Under maritime law, the seamen were entitled to "maintenance and cure" from the owners of their ships. "Maintenance" is a living allowance that permits the seaman to obtain housing and food while he recovers, G. Gilmore & C. Black, The Law of Admiralty § 6-12, at 305 (2d ed. 1975); "cure" is payment for medical care, see Calmar Steamship Corp. v. Taylor, 303 U.S. 525, 527-28 (1938).

Since 1798, the federal government has provided free medical care for such seamen in hospitals and clinics operated in recent times by the Public Health

Service. Admiralty courts routinely have taken judicial notice of the free medical care and have denied awards against the shipowners for medical services available at government expense. See Calmar Steamship, 303 U.S. at 531 and cases cited.

In 1981, Congress enacted the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 357 (1981) (hereinafter the "Budget Act"), a comprehensive appropriations bill that adjusted the eligibility requirements and amounts budgeted for a large number of federal programs. Among its other provisions, the Budget Act ordered the closure and transfer to nonfederal control of the Public Health hospitals and clinics. Section 986 of the Act terminated the right of outpatient seamen to obtain free medical care in the facilities after October 1, 1981, while

section 988 allowed continued free care for a maximum of one additional year for inpatient seamen hospitalized prior to October 1. Id. §§ 986, 988, 95 Stat. at 603, 604.

DISCUSSION

I. Separation of Powers

The seamen contend that the Budget act unconstitutionally usurps judicial powers in two ways. First, the Act frustrates remedies previously granted to seamen because the courts, in making awards to them, relied on the government's continued provision of free medical care, and laches now bars action against shipowners. Second, the Act legislates beyond congressional admiralty jurisdiction.

A. Frustration of Judicial Remedies

The seamen assume that closure of the Public Health facilities leaves them without a remedy against the shipowners

because of laches. Whether laches would bar relief against individual shipowners is not squarely before this court because the seamen have not brought suit against any of the owners, and the owners have not intervened. Consequently, for purposes of this action, we need only to determine whether, as the seamen argue, laches automatically must bar relief against the owners as a matter of law. The seamen cite no authority for the applicability of laches. Their assumption, however, underlies the entire constitutional attack on the Budget Act, and therefore warrants close examination.

Courts typically use an analogous state statute of limitations as a guide to the running of laches in admiralty cases. G. Gilmore & C. Black, The Law of Admiralty § 9-79, at 768-69 (2d ed. 1975). The equities of the parties on the facts of each case, however, must be

considered as well. Where the delay is excusable and there has been no prejudice to the other party, mere passage of time poses no bar to relief. Gardner v. Panama R. Co., 342 U.S. 29, 31 (1951) (per curiam). Some courts balance the inexcusability of delay against prejudice. "A weak excuse might suffice if there has been no prejudice; an exceedingly good one might still do even when there has been some." Larios v. Victory Carriers, Inc., 316 F. 2d 63, 67 (2d Cir. 1963); see also Fidelity & Casualty Co. of New York v. C/B Mr. Kim, 345 F.2d 45, 50 (5th Cir. 1965).

Although we do not decide the issue, we suspect that Congress' termination of the seamen's long-standing free medical care would qualify as an "exceedingly good" excuse for the seamen's delay in suing the shipowners. In Gardner, supra, a somewhat similar congressional

amendment of a law tolled laches. The plaintiff in Gardner was injured by the Panama Railroad, and filed a timely suit against the United States under the Federal Tort Claims Act. While the suit awaited trial, however, Congress amended the Act to exclude government liability for the railroad's negligent acts. In response, plaintiff immediately filed an in personam libel against the railroad, this time ten months after the running of the analogous statute of limitations. The Court held that laches did not bar plaintiff's action against the railroad because her delay was caused by Congress, not by her own fault. Gardner, 342 U.S. at 31.

In addition, the passage of time in the instant case may have caused the shipowners little prejudice because the facts necessary to the seamen's claims for "cure" in most cases already have

been established. At oral argument, counsel for the seamen conceded that virtually all of the class members were awarded maintenance allowances from the shipowners some time ago. The same facts establish the seamen's rights to cure. For both allowances, the seamen must prove that their illness or injury occurred while they were "within the service of the vessel" or answerable to the call of duty. IB Benedict on Admiralty § 42, at 4-7, § 43 at 4-9, 4-10 (7th ed. 1983); see also Farrell v. United States, 336 U.S. 511, 516 (1949).

Other courts have allowed actions for maintenance and cure to proceed in a variety of analogous situations despite substantial delays, where the delay was excusable or little prejudice to the defendant resulted. See, e.g., Sobosle v. United States Steel Corp., 359 F.2d 7, 12 (3d Cir. 1966) (laches not

automatically a bar where plaintiff's nine-year refusal of treatment was not voluntary); Fidelity & Casualty Co. of New York v. C/B Mr. Kim, 345 F.2d at 51-52 (ten-month delay excusable where defendant knew of the injury from the beginning); Taylor v. Crain, 195 F.2d 163, 165 (3d Cir. 1952) (delay of 5 years justified where ship's captain promised plaintiff continued employment if he did not sue and threatened to have him blacklisted if he did); Loverich v. Warner Co., 118 F.2d 690, 693 (3d Cir.), cert. denied, 313 U.S. 577 (1941) (no prejudice despite thirteen-year delay because medical records still available and no other evidence relevant).

Further, the cases suggest that the owner maintains an ongoing responsibility to provide maintenance and cure despite the government's provision of free medical care. If the owner, for example,

discovers that a seaman is not receiving proper care at a public facility the owner is obligated to pay for his treatment elsewhere. 1B Benedict on Admiralty § 49, at 4-47 (7th ed. 1983); see also Kratzer v. Capital Marine Supply, Inc., 645 F.2d 477, 482 (5th Cir. 1981)) (seaman entitled to private care where Public Health Service Hospital was unsuccessful in treating back injury); Keiser v. American President Lines, Ltd., 384 F.Supp. 554 (S.D.N.Y. 1974) (shipowner required to reimburse seaman for private medical care where Public Health Service failed to diagnose seaman's injury); Williams v. United States, 133 F. Supp. 319 (E.D. Va.), aff'd, 228 F.2d 129 (4th Cir. 1955), cert. denied, 351 U.S. 986 (1957) (owner would be responsible for moving seaman to different mental hospital if he were notified that care at state facility was

inadequate; dictum); cf. Diaz v. Gulf Oil Corp., 237 F. Supp. 261 (S.D.N.Y. 1965) (where Public Health Service hospital too far away, seaman entitled to emergency private hospitalization).

These authorities undercut any facile assumption that laches would preclude action against the shipowners as a matter of law. Laches may in fact bar certain actions, but not merely because of the passage of time. The issue is heavily fact-dependent and should be decided in individual suits against the owners. For purposes of the instant action, we merely hold that the Budget Act does not unconstitutionally invade the province of the judiciary by undoing remedies previously granted to the seamen.

B. Article III Limitation

The seamen contend that the U.S. Const. art. III, § 2 limits Congress'

power to impair the seamen's historic right to maintenance and cure. Article III, section 2 provides in relevant part: "The judicial Power shall extend . . . to all Cases of admiralty and maritime jurisdiction; . . . " Plaintiffs appear to reason that because federal courts define the scope of admiralty jurisdiction, see, e.g., Crowell v. Benson, 285 U.S. 22, 55 (1931); The Lottawanna, 88 U.S. (21 Wall.) 558, 575-76 (1874); Sound Marine & Machine Corp. v. Westchester County, 100 F.2d 360, 361 (2d Cir. 1938), cert. denied, 306 U.S. 642 (1939), the courts also define the substance of admiralty law, and Congress is powerless to alter the law so defined.

This simply confuses jurisdiction with substance. The decisions actually make clear that Congress may alter the substance of ancient admiralty law. See, e.g., The Lottawanna, 88 U.S. at 577 ("It

cannot be supposed that the framers of the Constitution contemplated that the law should forever remain unalterable. Congress undoubtedly has authority under the commercial power, if no other, to introduce such changes as are likely to be needed."); Reed v. Canfield, 20 F. Cas. 426, 427 (C.C.D. Mass. 1832) (No. 11, 641)("So far as any act of congress has changed or modified the principle of maritime law, [the ancient maritime law] is to be deemed, pro tanto, repealed; so far as it stands unaffected by any such legislation, it is to be followed out to all its just results."). Congress did not exceed its admiralty jurisdiction by terminating the seamen's free medical care.

II. Equal Protection

The seamen contend that Congress' termination of free medical care violates equal protection. As a preliminary

matter, the seamen contend that this court should strictly scrutinize the Budget Act because (1) seamen are a suspect classification for purposes of constitutional review and (2) the right to medical care is "fundamental." At a minimum, they argue, the limitation of extended benefits to hospitalized seamen was irrational.

A. Suspect Classification

The Supreme Court has recognized only three suspect classifications that require strict scrutiny for purposes of constitutional review: race, see, e.g., McLaughlin v. Florida, 379 U.S. 184, 191-92 (1964), nationality, see, e.g., Oyama v. California, 332 U.S. 633, 644-46 (1948), and alienage, see, e.g., Graham v. Richardson, 403 U.S. 365, 372 (1971). In addition, the Court at times has used intermediate standard of review for gender-based classifications, see, e.g.,

Craig v. Boren, 429 U.S. 190, 204 (1976), and occasionally an undefined, but heightened, review standard for classifications based on illegitimacy, see, L. Tribe, American Constitutional Law § 16-23, at 1057 (1978). The Court has not recognized seamen as a suspect class for constitutional purposes.

The seamen call our attention to a line of cases defining seamen as "wards of admiralty," occupying a favored status with the courts. See, e.g., Cortes v. Baltimore Insular Line, 287 U.S. 367, 377 (1932); Harden v. Gordon, 11 F. Cas. 480, 485 (C.C.D. Me. 1823) (No. 6,047). Those cases, however, make clear that the seamen's "wardship" only requires the courts to construe ambiguous admiralty statutes and ancient admiralty law in a manner most favorable to the seamen. It has nothing to do with constitutional review where the intent of Congress is

clear. See, e.g., Isbrandtsen Co. v. Johnson, 343 U.S. 779, 783 (1952) ("Statutes which invade the common law or the general maritime law are to be read with a presumption favoring the retention of long-established and familiar principles, except when a statutory purpose to the contrary is evident."). We are aware of no decision that has invalidated a statute on constitutional grounds merely because seamen occupy a favored status with the courts. Nor are we persuaded that seamen have been subject to such pervasive discrimination as to justify carving out a new suspect classification.

B. Fundamental Right to Medical Care

The seamen contend that strict scrutiny is warranted because the Budget Act deprives them of their fundamental right to medical care. Underlying this argument are the seamen's questionable

assumptions that laches precludes relief for cure against the shipowners, and that the seamen have no access to medical treatment other than through the Public Health hospitals. The Budget Act on its face, however, does not alter the right of the seamen to seek cure from the shipowners, nor does it otherwise prohibit the seamen from access to private medical care. Medical care still is available to the plaintiffs, either through individual payments, private insurance policies or government-financed social programs such as Medicare or Medicaid. Even if relief against the owners is unavailable, the seamen are in no different position with regard to access to medical care than many other American citizens. Because the seamen have not been denied equal access to medical care, we need not decide whether equal access to medical care is a

fundamental right subject to strict scrutiny for purposes of constitutional review.

C. Equal Protection Review of the Budget Act

Social or economic legislation that does not impinge on fundamental rights or employ suspect classifications must be upheld against equal protection attack if the varying treatment of different groups of persons is rationally related to a legitimate governmental objective. Hodel v. Indiana, 452 U.S. 314, 331 (1981). The legislation carries with it a presumption of rationality that can be overcome only by a clear showing of arbitrariness and irrationality. Id.; see also Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59, 83 (1978).

Even if we were to employ a heightened standard of review, however, we would find that the classification at

issue is substantially related to an important government objective. Congress terminated the plaintiffs' subsidized medical care in a comprehensive budget reduction bill aimed at a variety of social and economic governmental programs. Congress has great power to determine how best to allocate limited public funds among potential recipients, so long as its actions are free from individious discrimination. Cf. Dandridge v. Williams, 397 U.S. 471, 487 (1970) (power of state officials to allocate funds). Congress reasonably concluded that, in light of the availability of public and private hospitals, seamen no longer needed special governmental intervention to ensure the adequacy of their medical care. At the same time, the spread of sophisticated medical facilities has lessened the need for special

governmental hospitals to protect the public from communicable diseases brought home by wide-ranging seafarers. See S. Rep. No. 139, 97 Cong., 1st Sess. 880--81 (1981), reprinted in 1981 U.S. Code Cong. & Ad. News 396, 903-04. Elimination of the government's expense of furnishing the seamen's free health care, therefore, was substantially related to the legitimate reduction of the budget.

D. Extended Benefits for Hospitalized Seamen

The seamen further contend that the Budget Act's extension of coverage for an additional year to seamen hospitalized prior to October 1, 1981, establishes an irrational classification in violation of equal protection. They note that many seamen were being treated as outpatients for ailments requiring more expensive or prolonged treatment than those suffered by certain seamen hospitalized prior to

October 1. The Act makes no attempt to differentiate between seamen on the basis of either the seriousness of their medical condition or their ability to obtain alternate care.

The apparent purpose of the extension, however, was to ease the transition to private care for seamen with acute medical problems, and to provide a simple method of distinguishing those seamen from the rest. See H.R. Rep. No. 208, 97th Cong., 1st Sess. 811 (1981). The fact that some non-hospitalized seamen have serious chronic disorders does not make the classification irrational. Congress may adopt a classification in order to avoid the burden and expense of a case-by-case determination, even though the classification approximates, rather than mirrors, the result that a case-by-case determination would achieve. Mathews v.

Lucas, 427 U.S. 495, 509 (1976). The burden is on the plaintiffs to show the insubstantiality of the relationship between the classification and the result. Id. at 510. We hold that the extension of benefits to hospitalized seamen was not violative of equal protection.

III. Due Process

The seamen argue that the Budget Act denies due process by retrospectively terminating their "vested right" to care at government expense. Congress' retrospective termination of this right, they argue, should be subject to strict scrutiny.

Congress' gratuitous provision of free medical care did not give the seamen a "vested right" to the benefits immune from repeal. Property rights to public benefits are defined by the statutes or customs that create the benefits. See,

e.g., Board of Regents v. Roth, 408 U.S. 564, 577 (1972). When, as here, the statute authorizing the benefits is amended or repealed, the property right disappears.

Assuming arguendo, however, that termination of the plaintiffs' ongoing medical treatment actually is a retrospective denial of vested rights, the Supreme Court in Pension Benefit Guaranty Corp. v. R. A. Gray & Co., _____ U.S. _____, 104 S. Ct. 2709 (1984), recently defined the due process test for review of retroactive economic legislation: "'The retroactive aspects of legislation, as well as the prospective aspects, must meet the test of due process,' . . . But that burden is met simply by showing that the retroactive application of the legislation is itself justified by a

rational legislative purpose." Id. at 2718 (citation omitted).

Congress might have concluded that permanently disabled seamen, like active seamen, had adequate rights against shipowners, personal resources, private medical insurance or access to other governmental programs that would substitute for free treatment in the Public Health hospitals. Although the facts of the instant case are not determinative of the reasonableness of Congress' conclusion, several of the plaintiffs' affidavits indicate they do in fact have additional medical coverage. Despite the plaintiffs' contention that it was unnecessary for Congress to terminate the disabled seamen's coverage because the savings were miniscule, it was not irrational for Congress to do so.

IV. Taking Without Compensation

The seamen argue that the Budget Act

effects a taking without compensation of their contractual rights to cure and their fundamental right to medical care. This is essentially a recasting of the earlier arguments in terms of the fifth amendment's taking clause.

Like Social Security or railroad benefits, the hospital care provided for seamen by the government is a non-contractual benefit. In fact, unlike Social Security recipients, the seamen have not explicitly contributed a portion of their wages to finance the hospital care. It is clear that this program does not constitute "property" protected from governmental alteration or abolition. See, e.g., U.S. Railroad Retirement Board v. Fritz, 449 U.S. 166, 174 (1980) ("There is no claim here that Congress has taken property in violation of the Fifth Amendment, since railroad benefits, like social security benefits, are not

contractual and may be altered or even eliminated at any time."); Hisquierdo v. Hisquierdo, 439 U.S. 572, 575 (1979) ("Congress may alter, and even eliminate, [railroad benefits] at any time."); see also Flemming v. Nestor, 363 U.S. 603, 611 (1960) (Social Security benefits not property protected by due process clause).

V. Contractual Claims Against the Government

Plaintiffs assert that they have contractual claims for maintenance and cure directly against the government under several theories: (1) the government operated or chartered certain vessels and therefore stands in the place of the owners, (2) the government's provision of free care resulted in a novation of the seamen's original employment contracts, substituting the government as the party responsible for

the seamen's continued care, (3) the seamen are third party beneficiaries of a contract between the owners and the government, and (4) the seamen's reliance upon continued free medical care warrants an equitable remedy in quasi-contract.

A. Government-Operated Ships

Even if we assume that some of the plaintiffs have timely causes of action against the government for illnesses or injuries suffered in the service of government-operated vessels, they would not be entitled to invalidation of the Budget Act and reopening of the Public Health hospitals. At most they would be entitled only to the traditional forms of relief that would be available against other shipowners, as modified by the various statutes that define the limits of governmental liability in such situations. We do not attempt in the instant case to determine the seamen's

eligibility for or the parameters of such relief. The seaman's entitlement, if any, should be determined in individual suits against the government, not in a class action challenging the constitutionality of the Budget Act.

B. Novation of the Employment Contract

The seamen contend that the courts effected a partial novation of the seamen's employment contract. Courts traditionally have limited the seamen's recovery against the shipowners because of the free medical care available to seamen in the Public Health hospitals. See Calmar Steamship Corp. v. Taylor, 303 U.S. 525, 531 (1938). This limitation, the seamen argue, resulted in the substitution of the government as the primary provider of medical care under the employment contract. As discussed above, and as the seamen concede, the

primary obligation for maintenance and cure remains with the employer, and would revert back to it but for the alleged effect of laches.

This argument fails because, as we discussed above, laches is dependent on the facts of individual cases, and because none of the employers has been made a party to this action. Because laches does not operate as a matter of law, the seamen first must seek relief from the shipowners.

C. Third Party Beneficiary Contract

Under this theory, the government and the shipowners entered into a contract on the seamen's behalf. The government assumed the shipowners' duty to provide medical care for the seamen, in return for which the shipowners paid a tonnage tax and engaged in dangerous voyages beneficial to the nation's economy. As beneficiaries of this

purported contract, the seamen claim the right of enforcement.

Although the tonnage tax originally financed the marine hospitals, they have been financed by general revenues since 1907. Act. of Mar. 3, 1905, ch. 1484, 33 Stat. 1214, 1217 (1905). It is difficult to see how the tonnage tax in recent times could constitute a quid pro quo for medical services. In any event, the mere fact that Congress has levied a tax to finance medical care does not create in the beneficiaries a contractual right to the social benefits. Congress may change the level or amount of benefits, even when the benefit is directly financed by taxes upon the recipient's wages, as with Social Security. See, e.g., Richardson v. Belcher, 404 U.S. 78, 80 (1971).

Congress also presumably undertakes every social program with an eye towards encouraging socially beneficial behavior.

If compliance with Congress' encouragement were sufficient to create a contractual right to the benefits, Congress would retain little power to alter or abolish obsolete social programs, contrary to Richardson. We find no third party beneficiary contract for free medical services.

D. Quasi-Contract

The seamen contend that they have relied to their detriment on the government's promise of free medical care by undertaking dangerous seagoing careers and suffering illness or injury. At this late date, they argue, they can obtain neither private medical insurance nor relief against the shipowners. These circumstances allegedly warrant equitable relief against the government.

Central to this argument, however, is the questionable assumption that laches bars relief against the individual

shipowners. If untrue, the seamen still have available the allowances for cure upon which they allegedly relied. Because the laches issue is undetermined, and may not be determined in this action as it affects individual shipowners, we believe the question of equitable relief is not yet ripe.

CONCLUSION

We are not unmindful of the predicament of injured seamen who engaged in their employment with the understanding that the government would provide free hospitalization and medical care. Congress, however, had the authority to terminate the program. Cogent arguments have been advanced that more generous provisions should have been enacted for the benefit of seamen disabled prior to the passage of the Act. The ultimate decision, however, is for the legislature, not the judiciary.

The district court's summary judgment is AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MORGAN L. JONES; FRANCIS ANDERSON; FRANK BANASKY, et al.,	)	
Plaintiffs-Appellants,	)	No. 83-4309
-vs-	)	DC# CV 82-958V
RONALD REAGAN, President of the United States; MARGARET M. HECKLER, Secretary of the Department of Health and Human Services, et al.,	)	
Defendants-Appellees.	)	

APPEAL from the United States District Court for the Western District of Washington (Seattle)

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Western District of Washington (Seattle) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District

Court in this Cause be, and hereby is affirmed.

Filed and entered December 4, 1984

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MORGAN L. JONES, FRANCIS ANDERSON, FRANK BANASKY, ORRIE ANDERSON, JESSE H. PETRICH, GEORGE FIELD, RICHARD ELVERS, JAMES MENDES, AL BRUCE, HANS PEDERSEN, LEO ZINGMEISTER, Individually and as Representatives of a Class,	No. 83-4309 D.C. #CV 82-958V
Plaintiffs-Appellants,	
v.	
RONALD REAGAN, President of the United States; MARGARET M. HECKLER, Secretary of the Department of Health and Human Services; C. EVERETT KOOP, Surgeon General of the United States; and RICHARD ASHBAUGH, Acting Director of the Bureau of Medical Services,	
Defendants-Appellees.	

Before: ANDERSON, SKOPIL and BOOCHEVER, Circuit Judges.

The panel as constituted above has voted to deny the petition for rehearing

and reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 36(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

Filed February 13, 1985.
Entered February 26, 1985.

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MORGAN JONES, et al.,	)	
	)	
Plaintiffs,	)	No. C82-958V
	)	
vs.	)	ORDER
	)	
RONALD REAGAN, et al.,	)	
	)	
Defendants.	)	
	)	

This matter is before the Court for consideration of defendant's motion for summary judgment and plaintiff's motion for class certification.

Plaintiff's seek to declare §§ 986 and 988 of P.L. 97-35 (The Omnibus Budget Reconciliation Act of 1981) unconstitutional. Section 986 of the Act terminated entitlements to free medical care at Public Health facilities for merchant seamen and others as of October 1, 1981. Section 988 of the Act provided for continued care of certain categories of former beneficiaries during a one year period of transition. Specifically,

seamen who were inpatients on the date of termination continued to receive free medical care for up to one year, while seamen who were outpatients on that date, did not receive further free care.

Plaintiff's class consists of seamen declared Permanently Not Fit For Duty, whose underlying illness or injury occurred prior to October 1, 1981, and who were otherwise entitled to receive care prior to that date.

This court finds the statutory classification consistent with the due process clause of the Fifth Amendment. The equal protection clause forbids only invidious discrimination; it tolerates rational classifications and it permits legislative action that is addressed to the phase of the problem which seems most acute of the legislative mind. Williamson v. Lee Optical of Oklahoma, 348 U.S. 483, 489 (1955).

Accordingly, it is ORDERED that defendants' motion for summary judgment is hereby granted; that plaintiffs' motion for class certification is also granted.

Dated: September 9, 1983
Seattle, Washington

/S/ Donald S. Voorhees
DONALD S. VOORHEES
U.S. District Court

Presented by:

/S/ William J. McIntyre
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Approved as to form:

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2601 Elliott Avenue
Seattle, Washington 98121

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MORGAN JONES, et al.,	)	
	)	
Plaintiffs,	)	No. C82-958V
	)	
vs.	)	ORDER
	)	
RONALD REAGAN, et al.,	)	
	)	
Defendants.	)	
	)	

Having considered the motion of plaintiffs for reconsideration, together with the memoranda submitted by counsel, the Court finds that good cause has not been shown as to why the Court should reconsider its summary judgment of dismissal entered on September 13, 1983.

Accordingly, plaintiffs' motion for reconsideration is DENIED.

The Clerk of this Court is instructed to send uncertified copies of this order to all counsel of record.

DATED this 19 day of October, 1983.

/S/ Donald S. Voorhees
United States District Judge

The Omnibus Budget Reconciliation Act of 1981, Title IX, Subtitle J, §§ 986-988
P.L. 97-35 (8/31/81) 95 Stat. 602-605

Subtitle J - Orderly Closure, Transfer, and Financial Self-Sufficiency of Public Health Service Hospitals and Clinics

Sec. 986.(a) Subsection (h) of section 2 and subsections (a) and (b) of section 322 of the Public Health Service Act are repealed.

(b)(1) Section 322(e) of such Act is amended --

(A) by striking out "entitled to care and treatment under subsection (a) of this section and persons"; and

(B) by striking out "subsection (c)" and inserting in lieu thereof "subsection (a)".

(2) Subsections (c), (d), and (e) of section 322 of such Act are redesignated as subsections (a), (b), and (c), respectively.

(3) The section heading for section 322 of such Act is amended by striking out "SEAMEN" and inserting in lieu thereof "PERSONS UNDER QUARANTINE".

(4) Section 332(a)(2)(C) of such Act is amended by striking out "seamen" and inserting in lieu thereof "persons under quarantine".

(c) The amendments and repeals made by this action shall take effect on October 1, 1981.

CONTINUED CARE FOR MERCHANT SEAMEN HOSPITALIZED IN PUBLIC HEALTH SERVICE HOSPITALS

Sec. 988. (a) The Secretary shall provide, by contract or other arrangement with a Federal entity and without charge but subject to subsection (b), for the continuation of inpatient hospital services (and outpatient services related to the condition of hospitalization) to any individual who --

(1) on September 30, 1981, is receiving inpatient hospital services at a Public Health Service hospital on the basis of the entitlement contained in section 322(a) of the Public Health Service Act (42 U.S.C. 249(a)), as such section was in effect on such date, for treatment of a condition,

(2) requires continued hospitalization after such date for treatment of that condition (or requires outpatient services related to such condition), and

(3) the Secretary determines has no other source of inpatient hospital services available for continued treatment of that condition.

(b) Services may not be provided under subsection (a) to an individual after the earlier of --

(1) September 30, 1982,

(2) the end of the first 60-day consecutive period (beginning after September 30, 1981) during the entire period of which the individual is not an inpatient of a hospital.

(c) Notwithstanding any other provision of law, the head of any Federal department or agency which provides, under other authority of law and through federal facilities, inpatient hospital services or outpatient services, or both, is authorized to provide inpatient hospital services (and related outpatient services) to individuals under contract or other arrangement with the Secretary pursuant to this section.

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1984

MORGAN L. JONES, FRANCIS ANDERSON, FRANK BANASKY, ORRIE ANDERSON, JESSE H. PETRICH, GEORGE FIELD, RICHARD ELVERS, JAMES MENDES, AL BRUCE, HANS PEDERSEN, LEO ZINGMEISTER, Individually and as Representatives of a Class,

Petitioners,

v.

RONALD REAGAN, President of the United States; MARGARET M. HECKLER, Secretary of the Department of Health and Human Services; C. EVERETT KOOP, Surgeon General of the United States; and RICHARD ASHBAUGH, Acting Director of the Bureau of Medical Services,

Respondents.

DECLARATION OF JOHN BATTLES

I am the Seattle Port Agent for the Sailors Union of the Pacific, and have knowledge of the matters asserted herein.

I have examined the collective bargaining agreements in effect between the Sailors Union of the Pacific and

contracted steamship companies going back to 1941. Of 32 companies signatory to the 1941 collective bargaining agreement, 29 have gone out of business, and 1 has switched to a foreign flag. In the intervening 40 years, the various collective bargaining agreements show that many more shipping companies have come and gone out of business. Of the shipping companies signatory to the SUP collective bargaining agreement during the Vietnam War, only 2 remain in business, with a third switching to a foreign flag.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of May, 1985.

JOHN BATTLES

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

MORGAN L. JONES, FRANCIS ANDERSON, FRANK BANASKY, ORRIE ANDERSON, JESSE H. PETRICH, GEORGE FIELD, RICHARD ELVERS, JAMES MENDES, AL BRUCE, HANS PEDERSEN, LEO ZINGMEISTER, Individually and as Representatives of a Class,

Petitioners,

v.

RONALD REAGAN, President of the United States; MARGARET M. HECKLER, Secretary of the Department of Health and Human Services; C. EVERETT KOOP, Surgeon General of the United States; and RICHARD ASHBAUGH, Acting Director of the Bureau of Medical Services,

Respondents.

DECLARATION OF ORRIE ANDERSON

I am one of the named plaintiffs in the class of petitioners for the above-entitled cause, and am competent to testify to the matters asserted herein.

In 1966, I was injured in the service of the ship, aboard the M/V GALENA. Said vessel was owned and operated by Alaska Steamship Company. I have never been able to ship out since the GALENA. The injuries I received aboard that vessel ultimately led to a finding of Permanently Not Fit For Duty in 1968.

In connection with my injuries, I filed a lawsuit against Alaska Steamship Company for Jones Act negligence, unseaworthiness, maintenance and cure. I signed a release, settling the case, before my claim went to trial. In determining the amount of damages I had sustained, the lawyers for Alaska Steamship, my lawyer and myself, all relied on the lifetime provision of free medical care at the U.S. Public Health Service Hospital; discounting the future

cure which I knew that my condition would require.

Alaska Steamship Company went out of business approximately ten years prior to the shutdown of the U.S.P.H.S. Hospitals. I continue to require medical attention stemming from my injury in the service of the ship, much of which is not covered by Medicare or my union benefits.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of May, 1985.

Orrie Anderson

ORRIE ANDERSON